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assets or at least 5 percent of the person's stock or partnership interest, made on or about the net worth record date.

(4) A statement of the person's current financial condition and business history.

(5) A statement of the person's business plans, including projected earnings and, if available, dividend projections.

(6) Any appraisal of the person's fixed and intangible assets made on or about the net worth record date.

(7) A copy of any plan of reorganization, whether or not confirmed, with respect to a case under title 11, United States Code, or any similar law of a state or political subdivision thereof, involving the person and occurring within 5 calendar years prior to or any time after the net worth record date.

(c) *Incomplete submission.* If a contributing sponsor and/or members of the contributing sponsor's controlled group do not submit all of the information required pursuant to paragraph (a) of this section (other than the estimate described in paragraph (b)(1) of this section) with respect to each person subject to liability, the PBGC may base determinations of net worth and the collective net worth of persons subject to liability in connection with a plan termination on any such information that such person(s) did submit, as well as any other pertinent information that the PBGC may have. In general, the PBGC will view information as of a date further removed from the net worth record date as having less probative value than information as of a date nearer to the net worth record date.

§ 4062.7 Calculating interest on liability and refunds of overpayments.

(a) *Interest.* Whether or not the PBGC has granted deferred payment terms pursuant to § 4062.9, the amount of liability under this part includes interest, from the termination date, on any unpaid portion of the liability. Such interest accrues at the rate set forth in paragraph (c) of this section until the liability is paid in full and is compounded daily. When liability under this part is paid in more than one payment, the PBGC will apply each pay-

ment to the satisfaction of accrued interest and then to the reduction of principal.

(b) *Refunds.* If a contributing sponsor or member(s) of a contributing sponsor's controlled group pays the PBGC an amount that exceeds the full amount of liability under this part, the PBGC shall refund the excess amount, with interest at the rate set forth in paragraph (c) of this section. Interest on an overpayment accrues from the later of the date of the overpayment or 10 days prior to the termination date until the date of the refund and is compounded daily.

(c) *Interest rate.* The interest rate on liability under this part and refunds thereof is the annual rate prescribed in section 6601(a) of the Code, and will change whenever the interest rate under section 6601(a) of the Code changes.

[61 FR 34079, July 1, 1996, as amended at 71 FR 34822, June 16, 2006]

§ 4062.8 Liability pursuant to section 4062(e).

(a) *Liability amount.* If, pursuant to section 4062(e) of ERISA, an employer ceases operations at a facility in any location and, as a result of such cessation of operations, more than 20% of the total number of the employer's employees who are participants under a plan established and maintained by the employer are separated from employment, the PBGC will determine the amount of liability under section 4063(b) of ERISA to be the amount described in section 4062 of ERISA for the entire plan, as if the plan had been terminated by the PBGC immediately after the date of the cessation of operations, multiplied by a fraction—

(1) The numerator of which is the number of the employer's employees who are participants under the plan and are separated from employment as a result of the cessation of operations; and

(2) The denominator of which is the total number of the employer's current employees, as determined immediately before the cessation of operations, who are participants under the plan.

(b) *Example.* Company X sponsors a pension plan with 50,000 participants of which 20,000 are current employees and

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30,000 are retirees or deferred vested participants. On a PBGC termination basis, the plan is underfunded by \$80 million. Company X ceases operations at a facility resulting in the separation from employment of 5,000 employees, all of whom are participants in the pension plan. A section 4062(e) event has occurred, and the PBGC will determine the amount of employer liability under section 4063(b) of ERISA. The numerator described in paragraph (a)(1) of this section is 5,000 and the denominator described in paragraph (a)(2) of this section is 20,000. Therefore, the amount of liability under section 4063(b) of ERISA pursuant to section 4062(e) is \$20 million ($5,000/20,000 \times \80 million).

[71 FR 34822, June 16, 2006]

§ 4062.9 Arrangements for satisfying liability.

(a) *General.* The PBGC will defer payment, or agree to other arrangements for the satisfaction, of any portion of liability to the PBGC only when—

(1) As provided in paragraph (b) of this section, the PBGC determines that such action is necessary to avoid the imposition of a severe hardship and that there is a reasonable possibility that the terms so prescribed will be met and the entire liability paid; or

(2) As provided in paragraph (c) of this section, the PBGC determines that section 4062(b) liability exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination.

(b) *Upon request.* If the PBGC determines that such action is necessary to avoid the imposition of a severe hardship on persons that are or may become liable under section 4062, 4063, or 4064 of ERISA and that there is a reasonable possibility that persons so liable will be able to meet the terms prescribed and pay the entire liability, the PBGC, in its discretion and when so requested in accordance with paragraph (b)(2) of this section, may grant deferred payment or other terms for the satisfaction of such liability.

(1) In determining what, if any, terms to grant, the PBGC shall examine the following factors:

(i) The ratio of the liability to the net worth of the person making the re-

quest and (if different) to the collective net worth of persons subject to liability in connection with a plan termination.

(ii) The overall financial condition of persons that are or may become liable, including, with respect to each such person—

(A) The amounts and terms of existing debts;

(B) The amount and availability of liquid assets;

(C) Current and past cash flow; and

(D) Projected cash flow, including a projection of the impact on operations that would be caused by the immediate full payment of the liability.

(iii) The availability of credit from private sector sources to the person making the request and to other liable persons.

(2) A contributing sponsor or member of a contributing sponsor's controlled group may request deferred payment or other terms for the satisfaction of any portion of the liability under section 4062, 4063, or 4064 of ERISA at any time by filing a written request. The request must include the information specified in § 4062.6(b), except that—

(i) If the request is filed one year or more after the net worth record date, references to “the net worth record date” in § 4062.6(b) shall be replaced by “the most recent annual anniversary of the net worth record date”; and

(ii) Information that already has been submitted to the PBGC need not be submitted again.

(c) *Liability exceeding 30 percent of collective net worth.* If the PBGC determines that section 4062(b) liability exceeds 30 percent of the collective net worth of persons subject to the liability, the PBGC will, after making a reasonable effort to reach agreement with such persons, prescribe commercially reasonable terms for payment of so much of the liability as exceeds 30 percent of the collective net worth of such persons. The terms prescribed by the PBGC for payment of that portion of the liability (including interest) will provide for deferral of 50 percent of any amount otherwise payable for any year if a person subject to such liability demonstrates to the satisfaction of the